

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Guidelines for Evaluating the)
Environmental Effects of Radiofrequency)
Radiation)

ET Docket No. 93-62

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PETITION FOR RECONSIDERATION AND
CLARIFICATION OF PAGING NETWORK, INC.

Paging Network, Inc., on behalf of its operating subsidiaries, and through its attorneys, hereby requests modification and clarification of the Commission's *Report and Order* in the above captioned proceeding.¹ By virtue of the elimination of the exemption of paging and cellular carriers transmitters regulated under Part 22 and 90, which existed because of the ANSI determination that these facilities had a very low probability of having an adverse environmental impact, the *Order* imposes on paging carriers new and potentially onerous burdens which appear to go unrecognized by the Commission.

The Order Is Not Sufficiently Definite To Allow Carriers To Understand Their Compliance Obligations And The Degree To Which These Obligations Are Reasonable; Certain Rules Appear to Impose Unreasonable Burdens.

PageNet's Comments in the initial proceeding sought the continued exemption of private and common carrier paging operations from environmental processing requirements. In the alternative, PageNet sought reasonable rules which

¹ Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, ET Docket No. 93-62, RCC 96-326 (Aug. 1, 1996) ("Order").

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allowed carriers time to develop a compliance plan which could be implemented with a minimum of expense.

The Commission's rules, as adopted, do neither of these things. The rules are both burdensome and sufficiently unclear or incomplete as to negate a carrier's ability to comply. First, the Commission eliminates the exemption paging transmitters had. Second, under the rules adopted by the Commission for a facility which is not categorically excluded because its power is at or under 1000 Watts, carriers are apparently obligated, **for every facility above 1000 Watts**, to undertake a "routine evaluation" to determine whether the facility produces EME consistent with the MPEs in Table 1 of Section 1.1310 of the Commission's rules. If the MPE's in the table are exceeded, the carrier is required to file an Environmental Assessment ("EA"). The EA filed would be evaluated by the Commission to determine whether to grant the authorization in light of the environmental impact.

The Commission itself recognizes the enormous burden to each licensee associated with performing an EA. According to the Commission, the requirement that an EA be filed leads to a "'de facto' compliance requirement since most applicants who are not categorically excluded ...undertake measures to assure compliance before submitting an application in order to avoid the costly and time consuming EA."

Order at 78. The Commission, in its Regulatory Flexibility Analysis, concludes that approximately 1,176 paging transmitters will exceed categorical exclusion criteria and will require a determination of compliance with new guidelines , either by measurement or calculation. The Commission's Regulatory Flexibility Analysis is silent

on the number of transmitters which will be subject to a routine evaluation, itself a burdensome procedure requiring measurements from each transmitter site.²

As mentioned above, the *Order* removes the categorical exemption for paging facilities operating under Parts 22 and 99 of the Commission's rules. Under the new rules, those carriers operating facilities which exceed 1000 ERP will be required to do a routine analysis in order to determine compliance. For carriers operating under Parts 22 and 90, this will be a substantial percentage of all facilities, as the rules now in place authorize power of up to 3500 Watt ERP, not just the 1000 Watts ERP under which carriers used to operate. Furthermore, rooftop sites are increasingly important, in particular in the urban areas. PageNet estimates that at least 75 percent of its new sites will likely be on rooftops. Based on the foregoing, it is critically important that the rules are written in a manner which are both understandable, and with which a carrier is able to comply, preferably without being required to do routine analyses, and certainly without having to do EAs.

The rules, however, are not written in such a fashion because of a lack of definition of key words and concepts, as well as a lack of clarification as to how measurements are to be made. PageNet understands that some of this clarification may come from the release of the forthcoming OST Bulletin. But the release of the OST Bulletin subsequent to the release of the *Order* creates procedural problems for carriers.

² PageNet believes the Commission has vastly understated the number of affected transmitters. PageNet alone may have that many affected transmitters.

The rules now are not sufficiently clear to understand obligations, and thus understand completely the burdens under which carriers may labor. PageNet therefore files for reconsideration now, understanding that the OST Bulletin, when released may resolve certain or all of PageNet's concerns.

Specifically, the rules should determine that in controlled environments on rooftops, no routine analysis or EA is required. It should be enough that the rooftop has adequate signage to alert persons of the risks associated with being in a particular proximity to the RF equipment. OST Bulletin No. 65 could help define what constitutes reasonable signage.

Second, the OST Bulletin itself needs to be written with substantial industry input, and subject to notice and comment. The OST Bulletin, together with the *Order* will form the actual rules under which carriers will operate. The ability of the industry to participate in that formulation will both assure compliance with the Administrative Procedures Act, and give the Commission the opportunity to fully understand and balance benefits and burdens to the carriers and the public appropriately.

Third, as previously noted, carriers have not been able to ascertain the full extent of their new compliance obligations in the absence of needed clarifications to OST Bulletin 65.³ Under the circumstances, carriers will have only the period between

³ It may be that all transmitters will exceed the maximum MPE for both controlled and uncontrolled locations, depending on where the measurements are taken. Certainly the closer the measurements are taken to the transmitter, the higher the emissions, and thus,

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the release of that document and January 1, 1997 to not only determine how to meet their obligations, but also to evaluate their transmitter facilities. Because this period could be as short as one month, compliance would be rendered impossible, requiring the filing of waiver requests by virtually every carrier in the country. Instead, PageNet urges the FCC to reconsider the transition date and allow a period of one year following the release of OST Bulletin No. 65 for transition to the new regulations.

Fourth, PageNet also believes the Commission should reconsider the one percent trigger adopted for area-wide compliance obligations for both controlled and uncontrolled areas. In light of the restrictions imposed on the use of categorical exclusions, continued use of a one percent threshold appears to be much too low. PageNet believes that a trigger of 10 percent, or even substantially higher, would meet the Commission's regulatory objectives and significantly minimize unnecessary and burdensome obligations on licensees.

The modifications and clarifications requested by PageNet are intended to facilitate the process of achieving compliance with the new EME rules. Absent the requested reconsideration, carriers cannot even size the magnitude of the compliance task at hand, much less make rational judgments as to whether relief under the waiver procedures is necessary. Moreover, because PageNet believes that aspects of its reconsideration request may be mooted by OST Bulletin No. 65, PageNet urges the

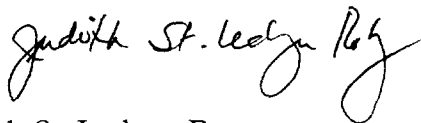
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the greater likelihood that the MPEs will be exceeded. Thus, the way in which measurements are taken, is critical in determining compliance.

Commission to expedite the release of this vital document, subject to the vital constraints of public notice and comment obligations.

Respectfully submitted,

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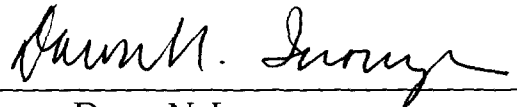
CERTIFICATE OF SERVICE

I, Dawn N. Inouye, hereby certify that a true and correct copy of the foregoing *Petition for Reconsideration and Clarification*, was sent, via U.S. mail, first-class, postage prepaid, to the following individuals:

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A handwritten signature in black ink, reading "Dawn N. Inouye", written over a horizontal line.

Dawn N. Inouye